



Federal Communications Commission
Washington, D.C. 20554

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Small Entity Compliance Guide

Leased Commercial Access; Modernization of Media Regulation Initiative

FCC 19-52

MB Docket Nos. 07-42, 17-105

This Guide is prepared in accordance with the requirements of section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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I. OBJECTIVES OF THE PROCEEDING

In the Report and Order in MB Docket Nos. 07-42 and 17-105 (2019 Order), the Commission modified its leased access rules as part of its ongoing Modernization of Media Regulation Initiative. The rules adopted are a continuation of the Commission's efforts to modernize media regulations and remove unnecessary requirements that can impede competition and innovation in the media marketplace. The Report and Order recognizes significant changes to the video marketplace, including, in particular, increased access to distribution alternatives for leased access programmers. These significant changes have occurred since the Commission initially adopted its leased access rules.

II. COMPLIANCE REQUIREMENTS

Vacating 2008 Leased Access Order. In the Report and Order, the Commission vacated the 2008 Leased Access Order (2008 Order).¹ Doing so clarifies the status of the Commission's leased access regime, furthers the Commission's media modernization efforts, and obviates the need to address the significant legal concerns raised in response to the 2008 Order. Implementation of the 2008 Order was stayed by the U.S. Court of Appeals for the Sixth Circuit² and its rules never went into effect. In addition, the Office of Management and Budget (OMB) issued a notice of disapproval of the associated information collection requirements. Vacating the 2008 Order also resolved longstanding challenges to the order, and it is consistent with the Commission's media modernization efforts, pursuant to which it seeks to remove rules that are outdated or no longer justified by market realities. The 2008 Order would have made leased access significantly more burdensome for cable operators, which would be contrary to today's highly competitive video marketplace. Vacating the 2008 Order will not have any impact on any party's compliance with or expectations concerning the leased access requirements, because the rule changes contained in that order never went into effect. Accordingly, as a result of the Report and Order, except for the rule changes specified therein, parties simply will remain subject to the same leased access rules they were operating under prior to 2008.

Eliminating Part-Time Leased Access. The Commission eliminated the requirement that cable operators make leased access available on a part-time basis. Instead, the leased access rules will apply only to leased access programmers that purchase channel capacity on a full-time basis for at least a one-year contract term. Leasing of a channel on a full-time basis will require that the channel is under the exclusive use of the programmer for the term of the contract.

Bona Fide Requests. The Commission eased burdens on cable operators by providing that all cable operators, and not just those that qualify as "small systems," are only required to respond to bona fide requests for leased access information. A bona fide request for information is a request from a potential leased access programmer that includes: (1) the desired length of a contract term; (2) the anticipated commencement date for carriage; and (3) the nature of the programming. These criteria must be met by a potential leased access programmer before a cable system will be required to provide responsive information. Because the Report and Order eliminated the

¹ *Leased Commercial Access*, MB Docket No. 07-42, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 2909 (2008).

² See *United Church of Christ Office of Communications, Inc. et al. v. FCC*, No. 08-3245 (and consolidated cases) (6th Cir., May 22, 2008).

requirement that cable operators make leased access available on a part-time basis, a bona fide request does not need to include the desired time slot, as was previously required.

Timeframe for Responding to Requests. To ease burdens on cable operators, the Commission extended the timeframe within which they must provide prospective leased access programmers with the information specified in section 76.970(i)(1) of the Commission's rules, from 15 calendar days to 30 calendar days for cable operators generally and from 30 calendar days to 45 calendar days for operators of systems subject to small system relief.

Application Fees and Deposits. The Commission permitted cable operators to impose a maximum leased access application fee of \$100 per system-specific bona fide request. The \$100 maximum application fee applies to an entire system-specific bona fide request; if a programmer amends a bona fide request, the cable operator may not use the amendment as an opportunity to charge an additional application fee. The Commission also permitted cable operators to require a security deposit or prepayment requirement of up to 60 days of the applicable lease fee. If a cable operator chooses to assess a security deposit or prepayment that exceeds 60 days of the applicable lease fee, such an assessment would remain subject to the current case-by-case review process if the programmer asserts that it is unreasonable. Cable operators may require leased access programmers to pay an application fee before the operator responds to a bona fide leased access request, whereas a security deposit is assessed as part of the execution of a leased access agreement.

Contact Information. The Commission adopted a requirement that cable operators provide potential leased access programmers with contact information for the person responsible for leased access matters. Basic contact information, including name or title, telephone number, and email address for the person responsible for responding to leased access requests for information must be posted on cable operators' own websites. If an operator does not have a website, it must disclose its contact information through alternate means, for example on a third-party website, such as the website of a cable or programmer trade association, and it could train employees to provide that website to callers inquiring about leased access matters.

Dispute Procedures. The Commission adopted the following common-sense modifications to the procedures for leased access disputes. First, it revised the terminology in section 76.975 by referencing an answer to a petition, rather than a response to a petition. Second, it modified section 76.975 by calculating the 30-day timeframe for filing an answer to a leased access petition from the date of service of the petition, rather than from the date on which the petition was filed. Third, it added a provision to section 76.975 requiring that replies to answers must be filed within 15 days after the answer has been submitted. Finally, it added a statement to section 76.975 that section 76.7 applies to petitions for relief filed under section 76.975, unless otherwise provided in section 76.975.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The Commission adopted the new contact information requirement described above, pursuant to which cable operators are required to provide potential leased access programmers with contact information, including name or title, telephone number, and email address, for the person responsible for leased access matters. This information must be posted on cable operators' own websites. If an operator does not have a website, it must disclose its contact information through alternate means, for example on a third-party website, such as the website of a cable or programmer trade association. The Commission also modified the deadlines pursuant to which cable system operators must provide prospective leased access programmers with the information

responsive to leased access requests, from 15 calendar days to 30 calendar days for cable operators generally and from 30 calendar days to 45 calendar days for operators of systems subject to small system relief. In addition, as explained above, the Commission adopted common-sense modifications to the procedures for leased access disputes.

IV. IMPLEMENTATION DATE

The rule amendments became effective thirty (30) days after the date of publication in the Federal Register, which was July 20, 2019, except for sections 76.970(h) and 76.975(e) that contain new or modified information collection requirements, which shall become effective after the Commission publishes a notice in the Federal Register announcing OMB approval and the relevant effective date.

V. INTERNET LINKS

A copy of the Order, FCC 19-52, MB Docket Nos. 07-42 and 17-105, is available at <https://docs.fcc.gov/public/attachments/FCC-19-52A1.pdf>.

A copy of the Federal Register summary of the order is available at <https://www.govinfo.gov/content/pkg/FR-2019-06-20/pdf/2019-13134.pdf>.